



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,461	02/23/2004	Heinz Plank	LVIP:111 US	8252

7590 06/25/2007  
HOWARD M. ELLIS  
SIMPSON & SIMPSON, PLLC  
5555 Main Street  
Williamsville, NY 14221

EXAMINER
----------

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
----------	--------------

3728

MAIL DATE	DELIVERY MODE
-----------	---------------

06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/784,461

Applicant(s)

PLANK, HEINZ

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-13 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3728

After further reconsideration of the Appeal Brief filed on 5/11/2007, the Examiner is hereby withdrawn the Office Action mailed on 11/09/2006 in favor of reopening prosecution.

Claim 14 has been cancelled by the Applicant on 5/11/2007.

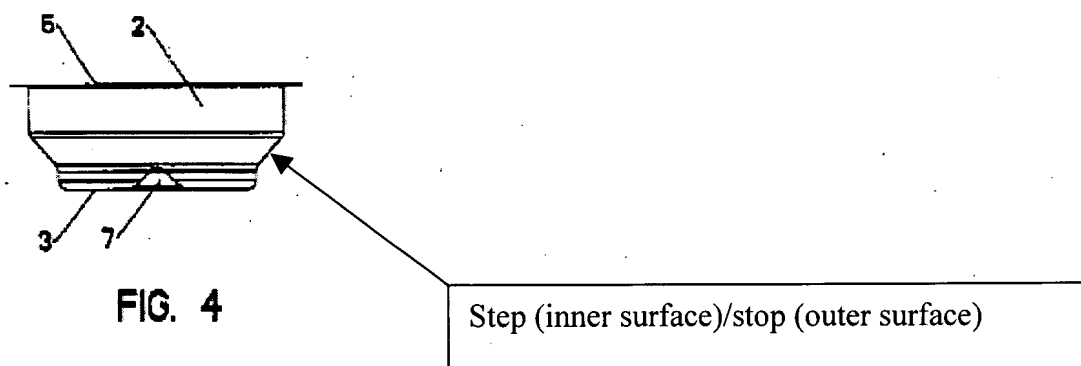
***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Leykin et al. (6,863,179; hereinafter Leykin'179). Leykin'179 discloses a container (1) for supporting an article comprising a left and a right sidewall, a backwall and a frontwall (see Figure 2) joined together to form a peripheral delimiting wall (2) having interior (4) and exterior sides, a base (3) attached to the peripheral delimiting wall closing off the container, an intermediate inclined wall portion/at least one peripheral step (see below and column 2, lines 20-27) formed in the interior side of the peripheral delimiting wall and the base having elevations (6) operatively arranged for providing an additional support for the article. The container of Leykin'179 is inherently capable for transporting a slide. As to claim 3, see Figure 4 (below). As to claim 10, Leykin'179 discloses the container formed from a dimensionally stable material (Figure 6).



***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leykin et al. (6,863,179; hereinafter Leykin'179) in view of Lafond et al. (6,446,807; hereinafter Lafond'807). Leykin'179 discloses the container (1) as above having all the limitations of the claims except for the container being stackable in a stack such that the base of one container constituting in each case the cover for a container located beneath it. Lafond'807 shows a container (12, 12', 12'') is stackable in a stack such that the base of one container constituting in each case the cover for a container located beneath it (Figure 1). It would have been obvious to one having ordinary skill in the art in view of Lafond'807 to modify the container of Leykin'179 so the container is stackable in a stack such that the base of one container constituting in each

Art Unit: 3728

case the cover for a container located beneath it to reduce space during storage and also the container of Leykin'179 is capable to stack one on top of the other.

5. Claims 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leykin et al. (6,863,179; hereinafter Leykin'179) in view of Anthony et al. (2002/0029989; hereinafter Anthony'989). Leykin'179 discloses the container (1) as above having all the limitations of the claim except for the two grip recesses being arranged opposite one another or a grip recess being formed in the left and the right sidewall close to the front wall. Anthony'989 teaches a container (10) comprising a grip recess (28) formed in a left and a right sidewall (16) to facilitate holding the container (paragraph 0025). It would have been obvious to one having ordinary skill in the art in view of Anthony'989 to modify the container of Leykin'179 so a grip recess is formed in the left and the right sidewall to facilitate holding the container. With respect to the location of the grip recesses, it would have been obvious to one having ordinary skill in the art in view of Leykin'179 as modified to form the grip recesses close to the front wall of the container because the selection of the specific location of the grip recesses would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using these specific location as claimed solves any particular problem or yields any unexpected results.

6. Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leykin et al. (6,863,179; hereinafter Leykin'179) in view of Burton et al. (5,310,076; hereinafter Burton'076). Leykin'179 discloses the container (1) as above having all the limitations of the

Art Unit: 3728

claim except for two parallel lugs being formed in the region of the back wall. Burton'076 shows a container (100) comprising two parallel lugs (103, 107) formed in the region of a back wall to facilitate orienting the container during stacking which is considered equivalent guide for arranging the container in the stack (column 2, lines 60-62 and Figure 3). It would have been obvious to one having ordinary skill in the art in view of Burton'076 to modify the container of Leykin'179 so the container comprises two parallel lugs formed in the region of the back wall to facilitate stacking the container.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leykin et al. (6,863,179; hereinafter Leykin'179) in view of Kato et al. (6,179,127; hereinafter Kato'127). Leykin'179 discloses the container (1) as above having all the limitations of the claim except for at least one protrusion being formed in the left and the right sidewall to prevent the article from contacting the left or right sidewall in the region of the protrusion. Kato'127 shows a container (1) comprising at least one protrusion (63, 64) formed in a left and a right sidewall (Figures 16-17) to prevent an article from contacting the left and the right sidewalls. It would have been obvious to one having ordinary skill in the art in view of Kato'127 to modify the container of Leykin'179 so each of the left and the right sidewall includes at least one protrusion for better protecting the article from getting damage by contacting the left and the right sidewalls.

Art Unit: 3728

***Allowable Subject Matter***

8. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to all claims filed on 5/11/2007 have been considered but are deemed to be moot in view of the new grounds of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb  
June 18, 2007

/Luan K. Bui/  
Primary Examiner  
Art Unit 3728